

## **NIH Partnership Council Minutes**

### **Monday, May 21, 2001**

Attendees: Charles Palmer, Leonard Taylor, Tony Clifford, Richard Laubach, Steve Rivero, Mike Showers, Penney Baile

Facilitator: Fern Kaufman

Old Business: Minutes of Thursday, February 15, 2001, Council meeting reviewed and approved with one minor modification.

New Business– Tim Wheelles’ (OMA) presentation on A-76 and the Federal Activities Inventory Reform (FAIR) Act:

Tim distributed a two-page handout which listed and described reason codes to be used in distinguishing commercial activities in the FAIR Act inventory being developed. This is the third year for NIH developing an inventory, but this is the first year there is a requirement for agencies to conduct cost comparisons by the end of FY02 on not less than 5% of positions listed as commercial in nature. Tim said a task group had been formed to work on the FAIR Act inventory and A-76. The group consists of several key OD officials, several executive officers, and members from the NIH Management Analysts working group. The group is: (1) coming up with a strategy to classify NIH positions by OMB Reason Codes ; (2) determining how NIH will go through a cost comparison process on 5% of its positions listed as commercial in nature; and, (3) taking a look at contracts throughout NIH and how many FTE are represented– a draft document is being prepared by Office of Acquisition Management and Policy. The task group is also trying to determine what positions should be identified as “in-house core” (Reason Code A).

Tim said the OMB A-76 guidance had already identified three types of positions to identify as Reason Code C, Commercial Exempt: (1) direct patient care; (2) R&D; and (3) functions with 10 or fewer FTE. He noted that positions in severable support of these cannot be identified as Reason Code C.

Positions designated Reason Code E (function retained in-house as a result of a cost comparison) are protected for 5 years (Tim to check on this). Positions designated Reason Code F (currently performed by in-house Federal employees, but review is pending on restructuring decisions) may include Human Resources and Acquisitions because of the impact of other studies and the New Business System.

When the inventory is completed, it will be published and placed on the Web. Interested parties will have a 30-day period in which to challenge the categorization of positions.

Richard questioned how often contracts get reviewed for cost comparisons and why contractors aren’t placed under the same pressures the Federal workers are placed under. He said that he

thought some contractors were costing NIH money because they were abusing the system. He gave the example of Federal workers having to repair a piece of equipment that a contractor was responsible for and had already allegedly repaired. Tony said the response to that example would be that the contract was not properly managed. Leonard noted that the current Administration wants smaller government and the A-76 process can provide it with that means. He noted he did not think the Administration was interested in conducting cost comparisons against current contracts which may result in bringing work and positions back to Federal service. Tim said he assumed if an IC was "taking a hit" from a contractor, the IC would review it.

Leonard acknowledged that he appreciated Richard's comment at a previous meeting on A-76 that employees should fight for their jobs, and if they're doing their job well they don't need to be concerned-- if you compete and win, you're protected for 5 years.

Richard noted that in addition to the A-76 process pushing CIVIL servants out the door, a large majority of them are veterans.

Tony emphasized the importance of the way in which jobs are described determining the way they are coded. He cited a previous example of how a grounds maintenance crew's duties were not just described as mowing, but also as needing the ability to have snow removed from the lots within a half hour of the beginning of the work day. Not a lot of contractors would be able to do that. Some contractors have a problem with depth. If we staff a site ourselves with two people, and we need six people on site the next morning, we can do it. A contractor may not be able to. We need to consider the unique features about what we do that makes us different and successful. Richard noted the diversity of the workforce. He said he was a boiler plant operator, but he would drive a snowplow in an emergency. He said a lot of workers can do jobs that contractors would have to call others in on.

It was suggested that the FAIR Act Inventory and A76 are areas in which the union could get involved. Leonard said we need to get a sense of whether we should look at the option of privatizing some of our services.

Fern summarized the following key points of the discussion:

1. NIH needs to be thorough in putting its inventory packages together to avoid work being contracted out only to have it not meet all of our needs;
2. The Union could bring the idea to Congress about reviewing contractors (Richard said the union is already doing that);
3. The need to review possible privatization of some functions.

Tony added a fourth point on the need to be educated and informed about the A-76 and FAIR Act Inventory process, including the meaning of all terms.

Tim said NIH's FAIR Act Inventory was due to HHS on June 1 (revised to June 13). Steve questioned whether the unions had a right to negotiate or participate in the development of the inventory. Tim said that once the inventories are published, the unions would have a right to

challenge designations. He said he had seen nothing in writing that gives the union the right to participate in the process before the list is published. Steve pointed to language in an OMB Circular on A-76 that he felt indicated the unions should be involved in the development of the inventory. Fern asked Steve and Richard to raise the matter to Steve Ficca. Richard questioned why he recently received correspondence from Mr. Ficca on the FAIR Act Inventory, and said that correspondence should come from Peter Themelis since Peter is the designated point of contact for labor relations matters. Leonard committed that it will. He said he would also raise the question to Peter about union involvement in the development of the ORS portion of the inventory.

Next meeting: Monday, June 18, 1:30 p.m., Building 31 Room B3CO2B.